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PATENT

Customer No. 22,852

Attorney Docket No. 5552.0265-04000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Heinz-Jürgen FRIESEN et al. ) Group Art Unit: 1641 ✓  
Application No.: 09/820,974 ) Examiner: Christopher L. CHIN  
Filed: March 30, 2001 )  
For: SHEET-LIKE DIAGNOSTIC )  
DEVICE )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**SUPPLEMENTAL SUBMISSION**

Applicants submit a Fourth Supplemental Declaration Under 37 C.F.R.

§ 1.175(b).

On February 27, 2004, the undersigned had a telephone conversation with Examiner Chin concerning proposed amendments to claims 47, 50, 54, and 57, a proposed Terminal Disclaimer, and a proposed Declaration. In that conversation, the Examiner tentatively agreed that the proposed amendments, Terminal Disclaimer, and Declaration were acceptable. The amendments to claims 47, 50, 54, and 57 were included in the Amendment filed on March 1, 2004, and the Terminal Disclaimer was submitted with that amendment. The Declaration is being filed along with this submission.

Applicants respectfully assert that the application is in condition for allowance and request issuance of a Notice of Allowance. If the Examiner does not consider the

application to be in condition for allowance, applicants request that he call Paul Barker at (650) 849-6620 to set up an interview.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: March 2, 2004

By: Mr. Paul Barker  
M. Paul Barker  
Reg. No. 32, 013

by  
Carol P. Edwards  
Reg. No. 32, 220

NO. 2563 P. 4

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Sir:

**FOURTH SUPPLEMENTAL DECLARATION UNDER 37 C.F.R. § 1.175(b)**

On behalf of Dade Behring Marburg GmbH, formerly Behringwerke

Aktiengesellschaft, the assignee of the entire interest in U.S. Patent No. 4,861,711, (the '711 patent), we hereby declare that:

1. We have authority to sign documents on behalf of Dade Behring Marburg GmbH. Dade Behring Marburg GmbH is the owner of the entire right, title, and interest in and to United States Patent No. 4,861,711, granted August 29, 1989, by virtue of a name change from Behring Diagnostics GmbH to Dade Behring Marburg GmbH, which was recorded at Reel 9197, Frame 0667. Behring Diagnostics GmbH was the sole assignee of the patent by virtue of an assignment executed by Behringwerke Aktiengesellschaft, which was recorded at Reel 8842, Frame 0428. Behringwerke Aktiengesellschaft was the sole assignee of the patent by virtue of an assignment executed by inventors Heinz-Jürgen Friesen, Gerd Grenner, Hans-Erwin Pauly, Helmut

Kohl, Klaus Habenstein, and Joseph Stärk, which was recorded at Reel 4496, Frame 0646.

2. We believe that the original, first and joint inventors of the subject matter which is claimed in the above-identified reissue application and for which a reissue patent is sought on the above entitled invention are Heinz-Jürgen Friesen (citizen of Germany), Gerd Grenner (citizen of Germany), Hans-Erwin Pauly (citizen of Germany), Helmut Kohl (deceased), Klaus Habenstein (citizen of Germany), and Joseph Stärk (citizen of Germany). The above identified reissue application was filed on March 30, 2001, and was accorded Serial No. 09/820,974.

3. We have reviewed and understand the contents of the above-identified reissue specification, including the reissue claims.

4. We acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56.

5. We hereby claim foreign priority benefits under Title 35, United States Code, § 119, of the foreign applications for patent listed below, and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Country</u>	<u>Application No.</u>	<u>Date of Filing</u>
Federal Republic of Germany	P 3445816	December 15, 1984

6. We executed an Original Reissue Declaration on May 7, 1996, for the parent Reissue Application No. 08/544,579, which was filed in this reissue application on March 30, 2001. In that declaration, we declared that "the '711 patent may be partly inoperative or invalid by claiming more than the patentee had a right to claim. Any error

that may have occurred in claiming more than the patentee was entitled to arose without any deceptive intent on the part of the inventors or Behringwerke." See Original Declaration ¶ 6. We then recited information regarding Interference No. 103,072 between Friesen et al. and Guire et al., in which the '711 patent was involved.

7. Claims 1 to 8, 10 to 21, and 23 to 34 of the '711 patent were held unpatentable to Friesen et al. in view of Guire et al. being awarded priority in Interference No. 103,072. Accordingly, we declare in this Fourth Supplemental Declaration that at least one error being relied upon as the basis for reissue under 37 C.F.R. 1.175(a)(1) is that the '711 patent is partly inoperative or invalid based on the findings of the Administrative Patent Judge in Interference No. 103,072, as claiming more than the patentee was entitled to claim in claim 1. We understand that when a claim is held unpatentable in view of a priority award to an opponent, the entire claim is held unpatentable. Thus, there is no particular portion of the claim language of claim 1 that constitutes an error. Rather, the entire claim language of claim 1 of the '711 patent constitutes the at least one error in the '711 patent.

8. In the present reissue application, the error in claim 1 has been corrected by adding claim 35. Claim 35 includes the subject matter of claim 1 of the '711 patent and further includes the language "wherein said MPAZ has dimensions to contain sufficient fluid to permit the fluid to migrate to the AZ, and wherein said layer of substantially planar zones contains at least two sheet-like strips made from different materials."

9. We believe that every error in the '711 patent being corrected in the present reissue application, including any error not covered by the original reissue declaration, the Supplemental Declaration, the Second Supplemental Declaration, or

the Third Supplemental Declaration submitted in this reissue application, arose without deceptive intent on the part of the inventors or the assignee, Dade Behring Marburg GmbH.

10. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the reissue application or any patent issued thereon.

Respectfully submitted,

Cynthia Tymeson (ppa)  
Name: Cynthia Tymeson  
Position: Corporate Counsel, Procurist

Dated: March 2, 2004